VERENDRA KALRA & CO LLP

CHARTERED ACCOUNTANTS

Communiqué

International Taxation

July 2026

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Inside this edition

ITAT Rulings

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ITAT Clarifies That Absence of Specific DTAA Clause Does Not Deny IHC Exemption

Facts

The assessee is a company incorporated in China and is a tax resident of China, engaged in the business of international shipping. During the relevant year, it conducted its shipping operations in India through its agent, Cosco Shipping Agencies (India) Pvt. Ltd. and filed its return of income declaring total income of Rs. 46.20 crore. During the assessment proceedings, the Assessing Officer noted that the assessee had earned Inland Haulage Charges (IHC) of Rs. 52.68 crore and incurred related expenses of Rs. 41.81 crore, resulting in a net amount of Rs. 10.87 crore, which was claimed as exempt under Article 8(1) of the India-China DTAA. The assessee contended that IHC was directly connected with the international transportation of goods and therefore eligible for exemption. However, the Assessing Officer rejected the claim, holding that IHC did not constitute income from international transportation covered under Article 8(1) of the India-China DTAA. He further treated Cosco Shipping Agencies (India) Pvt. Ltd. as the assessee's Agency Permanent Establishment (PE) in India and taxed the net IHC income of Rs. 10.87 crore as profits attributable to the PE. Aggrieved by the assessment order, the assessee filed an appeal before the First Appellate Authority.

Ruling

In the present case, The Mumbai ITAT upheld the order of the CIT(A) and held that Inland Haulage Charges (IHC) are eligible for exemption under Article 8 of the India-China DTAA, even though the Article does not specifically contain a clause covering activities directly connected with international transportation. The Tribunal observed that the assessee, being a tax resident of China, is engaged in the business of international shipping and is entitled to claim benefits under the DTAA. It explained that IHC represents charges recovered from customers for transporting cargo between the customer's premises and the port. Such transportation is an integral part of the overall movement of goods from the place of origin to the final destination. While the Assessing Officer denied the exemption on the ground that Article 8 of the India-China DTAA does not contain the specific words "any other activity directly connected with such transportation", unlike certain other treaties such as the India-Belgium DTAA, the Tribunal held that this distinction is not decisive. It noted that the transportation of goods from origin to destination is carried out as a single, composite, and continuous activity, of which inland haulage forms an inseparable part. Relying on the OECD Commentary and earlier decisions in CMA CGM SA, Delmas SAS, and A.P. Moller Maersk A/S, the Tribunal concluded that IHC income is closely connected with international shipping operations and therefore falls within the scope of Article 8 of the India-China DTAA. Accordingly, the exemption claimed by the assessee was upheld.

Source : ITAT, Mumbai in the case of DCIT, Vs COSCO Container Lines vide [TS-972-ITAT-2026(Mum)] on June 30, 2026

ITAT Holds DDT on Dividends to Swiss Residents Cannot Exceed 10% DTAA Rate

Facts

The assessee is an Indian company belonging to the SGS Group, Switzerland. During the relevant assessment years, it distributed dividends to its shareholders who were tax residents of Switzerland and paid Dividend Distribution Tax (DDT) under section 115-O of the Income-tax Act. During the assessment proceedings, the assessee claimed a partial refund of the DDT paid, contending that under Article 10 of the India-Switzerland DTAA, dividend income is taxable at 10%, whereas DDT had been paid at 16.99%. Therefore, it argued that the excess tax paid should be refunded. The Assessing Officer rejected the claim, holding that the DTAA rate applies to the recipient of the dividend, whereas DDT is a tax payable by the company distributing the dividend. The assessee challenged this decision before the CIT(A), who, relying on earlier ITAT decisions, including the Special Bench ruling in DCIT v. Total Oil India Ltd., upheld the Assessing Officer's view and rejected the assessee's claim.

Ruling

The Hon'ble bench held that the Dividend Distribution Tax (DDT) payable by the assessee on dividends distributed to its Swiss-resident shareholders should be restricted to 10%, as provided under Article 10 of the India-Switzerland DTAA. The Tribunal relied on the Bombay High Court's decision in Colorcon Asia (P.) Ltd., wherein it was held that although DDT is paid by the Indian company, it is effectively a tax on the dividend income of the shareholders. Therefore, where the DTAA provides a lower tax rate, the benefit of the treaty must be extended in terms of section 90(2) of the Income-tax Act. The ITAT further observed that domestic tax provisions cannot override the provisions of a DTAA. Accordingly, the tax on dividends cannot exceed the beneficial treaty rate prescribed under the applicable tax treaty. The Revenue's argument that the treaty benefit was available only if the shareholders were the beneficial owners of the dividends was also rejected. The Tribunal noted that neither the Assessing Officer nor the CIT(A) had disputed the beneficial ownership status of the Swiss shareholders. Accordingly, the Hon'ble bench directed the Assessing Officer to restrict the DDT rate to 10% and grant a refund of the excess tax paid, thereby allowing the assessee's appeal.

Source : ITAT, Mumbai in the case of SGS India Private Limited. vs CIT vide [TS-975-ITAT-2026(Mum)] on July 4, 2026

ITAT Deletes PE Addition, Holds Marketing Fee Paid to Indian Subsidiary Covers Indian Functions

Facts

The The assessee, The assessee, Sabre Asia Pacific Pte. Ltd., is a company incorporated in Singapore and a tax resident of Singapore. It operates a Computerised Reservation System (CRS)/Global Distribution System (GDS) called Sabre GDS, which facilitates airline ticket bookings. In India, its wholly owned subsidiary, Sabre Travel Network India Pvt. Ltd. (STNIPL), markets and promotes the Sabre GDS to travel agents. The assessee earns booking fees from airlines and pays Marketing Service Fees (MSF) to STNIPL for its services. During the assessment proceedings for AY 2020-21, the Assessing Officer held that the assessee had a Permanent Establishment (PE) in India under the India-Singapore DTAA and proposed to tax Rs. 16.52 crore, being 10% of the gross revenue earned from Indian operations. The assessee argued that it did not have a PE in India and that, in any case, no further income was taxable since substantial functions were performed by STNIPL, which had already been compensated through marketing service fees of Rs. 110.74 crore. The assessee also relied on earlier judicial decisions in its favour. However, the Assessing Officer rejected these contentions and made the addition. The DRP upheld the Assessing Officer's view, following which the assessee filed an appeal before the ITAT.

Ruling

In the present case, The Mumbai ITAT held that although Sabre Asia Pacific Pte. Ltd. had a Permanent Establishment (PE) in India, no additional income could be taxed in India on account of such PE. The Tribunal noted that, as per earlier decisions in the assessee's own case, only a specified portion of the revenue earned from Indian bookings can be attributed to the Indian PE. However, if the marketing service fees or commission paid to the Indian subsidiary exceed the income attributable to the PE, no further income remains taxable in India. In the present case, the assessee had paid marketing service fees of Rs. 110.74 crore to its Indian subsidiary, Sabre Travel Network India Pvt. Ltd., which was significantly higher than the income sought to be attributed to the Indian PE by the tax authorities. Relying on its earlier rulings in the assessee's own case, the ITAT held that once the Indian subsidiary has been adequately compensated for the functions performed in India, no further profit attribution is warranted. The Tribunal also observed that the Revenue had not brought any new facts or contrary judicial precedent to justify a different view. Accordingly, the ITAT rejected the approach adopted by the Assessing Officer and the DRP in taxing Rs. 16.51 crore as income attributable to the Indian PE and deleted the entire addition, holding that no further income was chargeable to tax in India.

Source : ITAT, Mumbai in the case of Sabre Asia Pacific Pte. Ltd vs ACIT(A), vide [TS-994-ITAT-2026(Mum)] on July 6, 2026

ITAT Deletes Section 40(a)(i) Addition, Holds Corporate Charges Not Taxable in India

Facts

The brief facts are that the assessee, Anixter India Private Limited, is engaged in the business of distribution of communication products, electrical and electronic wires, cables, and fasteners. For AY 2018-19, it filed its return of income and was subsequently selected for scrutiny assessment. During the assessment proceedings, the Assessing Officer noticed that the assessee had paid Rs. 3.87 crore as corporate charges to Anixter Singapore Pte. Ltd. without deducting tax at source under section 195 of the Income-tax Act. The assessee contended that the payment was not taxable in India under the India-Singapore DTAA, as the services did not "make available" any technical knowledge, skill, or know-how and therefore did not qualify as Fees for Technical Services (FTS). It further argued that the payment constituted business income of the Singapore entity, which was not taxable in India in the absence of a Permanent Establishment (PE). However, the Assessing Officer treated the payment as FTS under section 9(1)(vii) of the Act and disallowed the assessee's claim. The CIT(A) upheld the Assessing Officer's view by following the decision taken in the assessee's own case for the earlier assessment year. Aggrieved by this, the assessee filed an appeal before the ITAT.

Ruling

The Hon'ble bench held that the payment of Rs. 3.86 crore made by the assessee to Anixter Singapore towards corporate support charges was not taxable in India under the India-Singapore DTAA. Therefore, the assessee was not required to deduct tax at source under section 195, and the disallowance made under section 40(a)(i) was not justified. The Tribunal observed that the services provided did not "make available" any technical knowledge, skill, or expertise to the assessee, which is a necessary condition for treating the payment as Fees for Technical Services (FTS) under Article 12 of the DTAA. Accordingly, the payment could not be taxed as FTS in India. The ITAT also rejected the CIT(A)'s finding that Anixter Singapore had a Permanent Establishment (PE) in India, noting that there was no fixed place of business, dependent agent, or any other condition required to constitute a PE. Relying on its earlier decision in the assessee's own case, the Tribunal held that since the payment was not chargeable to tax in India, the provisions of section 195 were not applicable. Consequently, the disallowance of Rs. 3.86 crore under section 40(a)(i) was deleted and the assessee's appeal was allowed.

Source : ITAT, Chennai in the case of Anixter India Private Limited vs ITO, vide [[TS-1050-ITAT-2026(CHNY)] on July 15, 2026

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